Case: 1:21-mj-00488
Assigned To : Meriweather, Robin M.
Assign. Date : 06/22/2021
Description: Complaint w/ Arrest Warrant

STATEMENT OF FACTS

Your affiant is a Special Agent with Homeland Security Investigations ("HSI") and I am currently assigned to a Joint Terrorism Task Force ("JTTF") with the FBI Tampa Division in Tampa, Florida. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. I have served as a Special Agent since May 2009. Prior to that time, I was a Special Agent with the Florida Department of Law Enforcement ("FDLE") assigned to the Tampa, Florida office from 2004-2009 and was a Tulsa Police Officer from 1998-2004 in Tulsa, Oklahoma. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification are allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate met in separate chambers of the U.S. Capitol to certify the vote count of the Electoral College November 3, 2020 Election. The joint session began at approximately 1:00 p.m. Shortly thereafter, at approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the U.S. Capitol; however, around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

At approximately 2:20 p.m., members of the United States House of Representatives and United States Senate, including Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Mike Pence remained in the U.S. Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

While JTTF employees reviewed U.S. Capitol security camera footage, open source pictures, and video's taken from outside the U.S. Capitol, they observed an unidentified male subject, later identified as Mitchell Todd Gardner II ("GARDNER"), wearing a red stocking cap, black jacket, black pants, and gray underwear. The images and video footage show GARDNER inside the restricted areas and inside the U.S. Capitol. GARDNER is seen on video and in pictures standing on a U.S. Capitol window ledge striking and damaging the window with what appears to be a red canister covered with a black case. GARDNER is also seen spraying the contents of this red canister at the U.S. Capitol Police guarding the entrance to the U.S. Capitol.

The images below are from open source footage at the U.S. Capitol grounds on January 6, 2021. Image One and Two show GARDNER standing on the window ledge described above. GARDNER is wearing a black jacket in Images One and Two. GARDNER is circled in red.

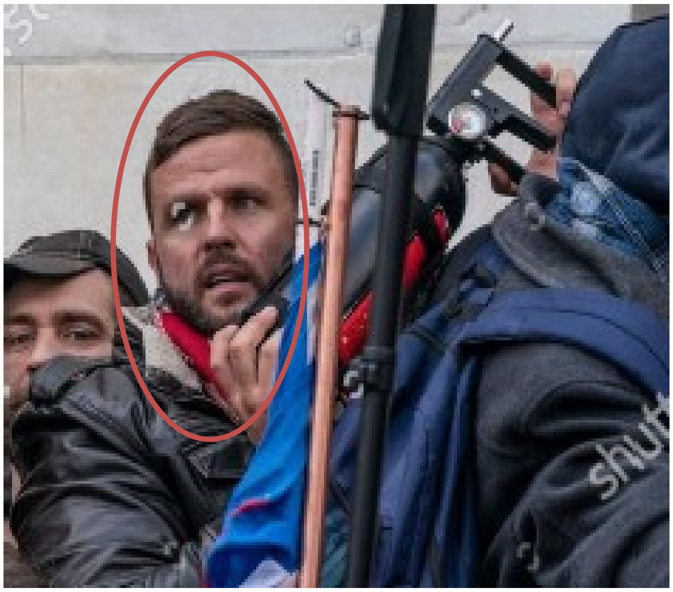


Image One

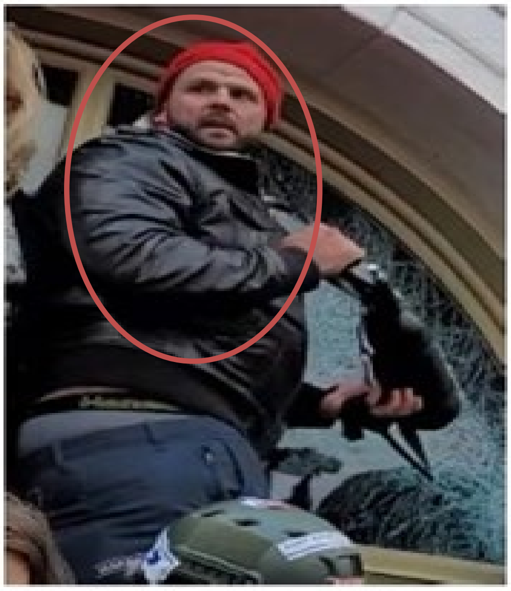


Image Two

The images below show GARDNER inside the U.S. Capitol on January 6, 2021. In image Three, GARDNER is wearing a red sweater and a stocking hat. In Image Four, GARDNER is wearing a red sweater and a stocking hat. GARDNER is circled in red.

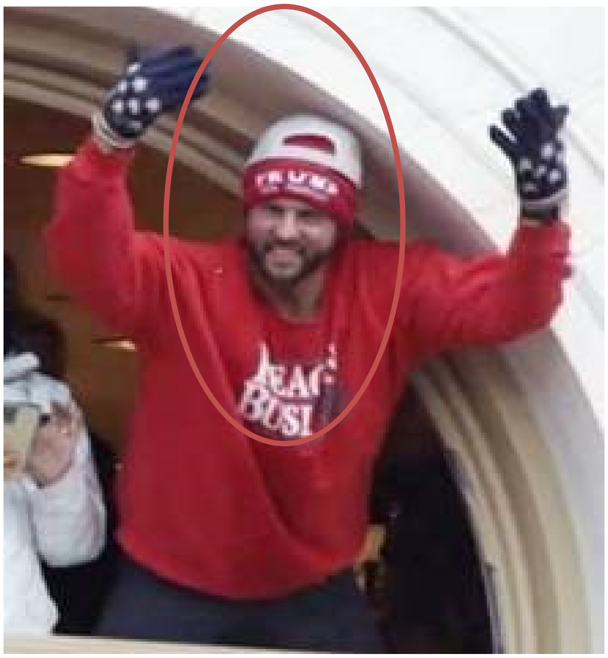


Image Three

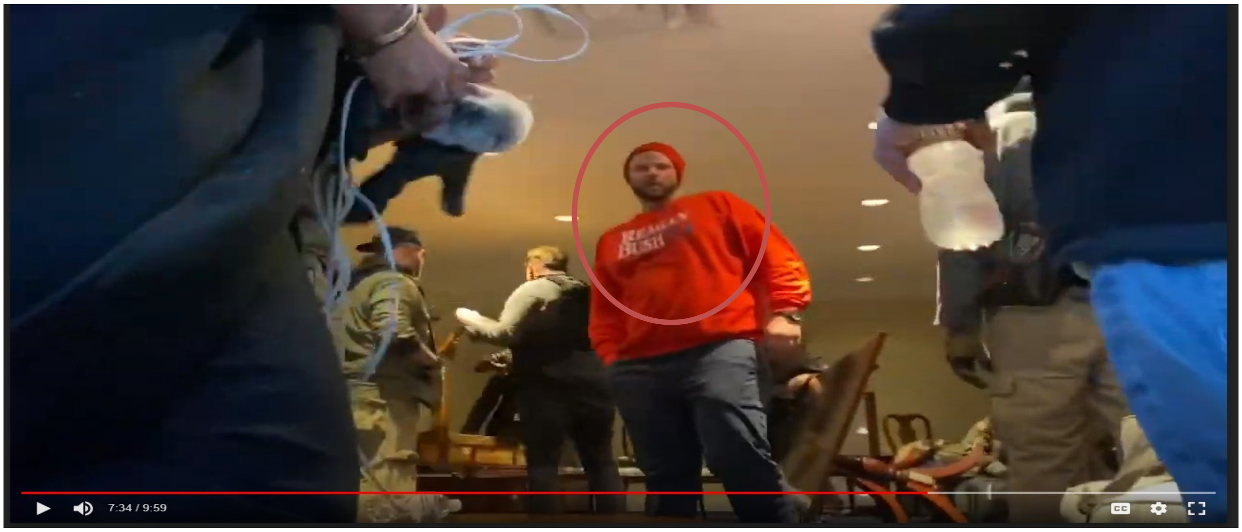


Image Four

The image below shows GARDNER spraying the contents of the red canister covered with a black case at the U.S. Capitol Police on January 6, 2021. GARDNER is circled in red.

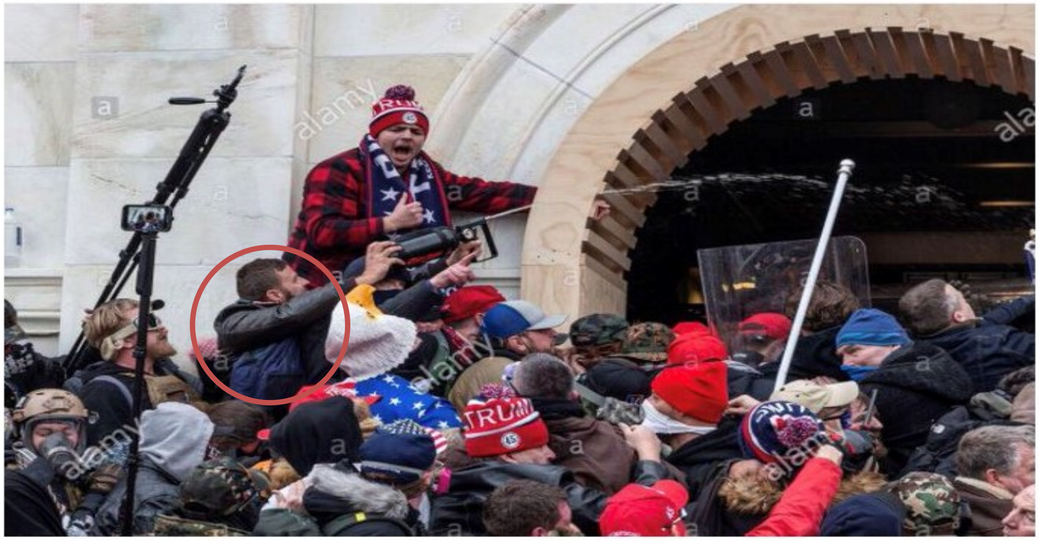
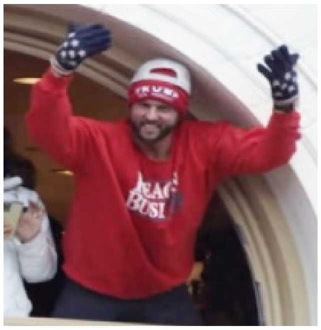


Image Five

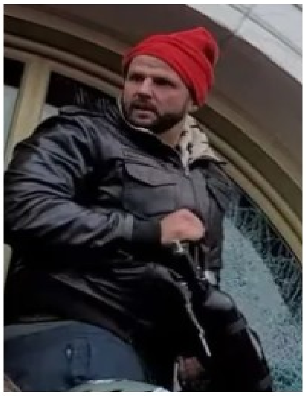
On or about January 27, 2021, in response to an online FBI tip regarding GARDNER, Task Force Officers ("TFO") of FBI Tampa Division conducted a telephone interview with witness-1 ("W-1"). The following is not a verbatim account of the interview and is intended to be a summary of the interview. W-1 told TFOs that he/she made an online FBI tip regarding his/her encounter with an individual named GARDNER. W-1 has known GARDNER for approximately 6 months. W-1 stated that on or about January 17, 2021, that W-1 encountered GARDNER. W-1 stated that during this encounter, GARDNER told him/her that GARDNER was at the U.S. Capitol on January 6, 2021, and "things got a little crazy." W-1 confirmed with TFOs that he/she submitted an online tip to FBI regarding GARDNER.

On or about March 15, 2021, TFOs conducted an in-person interview with W-1. During this interview, TFOs showed W-1 the photographs below, Images Six, Seven, and Eight. After reviewing the photographs below, W-1 positively identified GARDNER to be the individual in the below images.



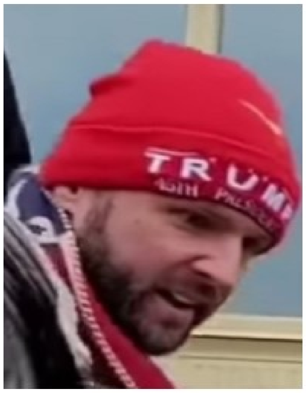
Photograph #220 - AFO C

Image Six



Photograph #220 - AFO B

Image Seven



Photograph #220 - AFO A

Image Eight

Through further investigation, FBI determined that a cellphone associated with the number [redacted] is used by GARDNER. W-1 told TFOs that he/she has contacted GARDNER via cellphone and stated that [redacted] belongs to GARDNER. According to records obtained through a search warrant which was served on Verizon Wireless, in and around the time of the incident, the cellphone associated with [redacted] was identified as having utilized a cell site consistent with providing service to a geographic area that includes the interior of the U.S. Capitol building.

FBI determined that the U.S. Capitol window GARDNER struck outside ST-2M (Senate Terrace Room 2 Mezzanine) and the estimate to replace the widow exceeds $1,500 USD. In Image Nine, Gardner standing in front of the broken window and is wearing a black jacket and red stocking hat. GARDNER is circled in red.

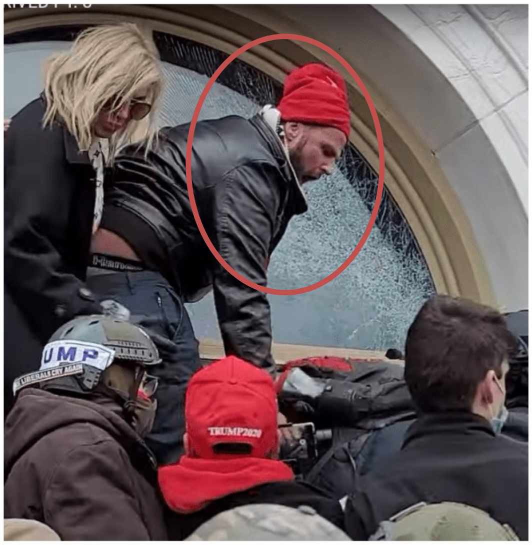


Image Nine

Based on the aforementioned evidence, there is probable cause to believe that GARDNER was present inside the U.S. Capitol on January 6, 2021, during the riot and related offenses that occurred at the U.S. Capitol Building, located at First Street, SE, Washington, D.C.

Accordingly, your affiant submits that there is probable cause to believe that GARDNER violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a "restricted building" includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is probable cause to believe that GARDNER violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so.

Your affiant submits that there is probable cause to believe that GARDNER violated 18 U.S.C. § 1361, which makes it a crime to destroy government property by striking the window with the red canister covered with the black case.

Your affiant submits there is also probable cause to believe that GARDNER violated 40 U.S.C. § 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

[redacted]

[redacted] SPECIAL AGENT
HOMELAND SECURITY INVESTIGATIONS

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 22 day of June, 2021.

2021.06.22
15:10:12 -04'00'

ROBIN M. MERIWEATHER
U.S. MAGISTRATE JUDGE